

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

**UNITED STATES OF AMERICA
ex rel. ROGER L. SANDERS, et al.,**

Plaintiffs,

-vs-

Case No. 1-:95-CV-970

ALLISON ENGINE COMPANY, et al.,

Judge Thomas M. Rose

Defendants.

**ENTRY AND ORDER GRANTING RELATORS' MOTION IN LIMINE
CONCERNING THE GOVERNMENT'S NON-INTERVENTION
DECISION (Doc. #477)**

Now before the Court is Relators' Motion In Limine Concerning the Government's Non-Intervention Decision. (Doc. #477.) This Motion is fully briefed and now ripe for decision.

In this Motion, the Relators seek an order prohibiting the Defendants from mentioning that the failure of the Government to intervene in this action is a comment on the lack of merit of this action. Defendants respond that they will not argue that "the mere fact of non-intervention was a comment by the Government concerning the lack of merit of Relators' lawsuit..." Defendants also argue that the jury must hear how the facts of this case interplay with the plain language of the False Claims Act (the "FCA") and the statutory text requires that the objective fact that the Government declined to intervene be admitted.

In this case, the Government has declined to intervene. In doing so, the Government has indicated that, "[o]ur decision to decline should not be construed as a statement about the merits

of the case.” (Relators’ Motion In Limine Concerning the Government’s Non-Intervention Decision, Ex. A, Department of Justice letter of 2/8/00).

Pursuant to the evidence now before the Court, the Government has given no indication regarding its opinion as to the merits of this case. The Government’s absence thus far is a fact. Why the Government is absent is currently unknown.

Therefore, the Defendants may not indicate that the Government’s decision to intervene was a comment by the Government on the merits of this action. By the same reasoning, Relators may not indicate that the Government’s absence in this case does not reflect the Government’s opinion of the merits. Relators’ Motion In Limine Concerning the Government’s Non-Intervention Decision is GRANTED.

The Parties argue several other issues in their Briefs on this matter including what is included in the FCA regarding intervention, whether the fact that the Government declined to intervene may be introduced and what jury instructions should be given relating to Government intervention. However, none of these issues need to be addressed in order to rule on the Motion now before the Court and are not addressed herein.

The Parties are reminded that a ruling on a motion in limine “is no more than a preliminary, or advisory, opinion that falls entirely within the discretion of the district court.” *United States v. Yannott*, 42 F.3d 999, 1007 (6th Cir. 1994)(citing *United States v. Luce*, 713 F.2d 1236, 1239 (6th Cir. 1983), *aff’d*, 469 U.S. 38 (1984)), *cert. denied*, 513 U.S. 1182 (1995). This preliminary ruling allows the parties to formulate their trial strategy. *Id.* “However, the district court may change its ruling at trial for whatever reason it deems appropriate.” *Id.*

DONE and **ORDERED** in Dayton, Ohio, this Fourteenth day of February, 2005.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record